IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1088 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BIHARILAL M. GINGAR - Appellant
Versus
ZAMAKLAL MOTILAL & 1 - Respondents

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Appearance :
MR MG NAGARKAR for Appellant: MR SN SHELAT for Appellant:
MR CM KELLA for Respondent : 1
MR. M.A. PATEL, LD. APP for Respondent: 2.

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 01/12/2006

ORAL JUDGMENT

1. The Ahmadabad Municipal Corporation through its Food Inspector Shri. Biharilal M. Gingar has

preferred this appeal under Section 378 of the Criminal Procedure Code [hereinafter referred to as the "Code" for brevity], challenging the order of acquittal dated 01/02/1991, acquitting the accused of the charge of commission of offence under Section 7 and 16 of the Prevention Of Food Adulteration Act, 1954 [hereinafter referred to as the "PFA Act" for brevity]. This Court (Coram: B.J. Shethna, J) granted leave and admitted the appeal vide order dated 18/11/1992.

2. The case of the prosecution deserve to be set out as under:-

The concerned complainant Food Inspector at the relevant time while discharging his duties as such, visited the shop of the accused. After introducing himself as Food Inspector and notifying his intention to collect the food sample, under Rule 12 Form No.6 issued notice and collected sample of groundnut oil (Singtel) for the purpose of analysis. After following the due procedure the sample food was sent for analysis. The Public Analyst has opined that the sample of food article was adulterated. Thereafter sanction was taken from the competent authority and complaint was lodged against the respondent no.1/ original accused which came to be registered as Criminal Case No. 17 of 1988. After lodging the complaint, the accused was summoned, who pleaded not guilty to the charge and claimed to be tried. After recording

evidence, further statement of the accused came to be taken under section 313 of the Code wherein accused denied the case of the prosecution. The trial court after considering records & proceedings, came to the conclusion that the evidence on record can not be said to be sufficient to bring home charge of committing offence under Section 7 and 16 (i) of the PFA Act by the accused and, therefore, he has been acquitted of the charges vide impugned judgment & order dated 01/02/1991, which is impugned in the present appeal.

3. According to the test report the deficiency in the sample food groundnut oil is found to be Saponification value which is less by 4 % and it is opined that the sample of Singtel did not conform to the standards laid down in Prevention of Food Adulteration Rules.

4. This appeal could be disposed of on the ground that the independent panch witness has not supported the case of the prosecution nor has he been declared hostile. When the independent panch is not declared hostile, his testimony can not be brushed aside and it has to be taken on its face value. This panch witness has rather said that he was not there when sample was being collected. This has dealt a serious blow to the version of the prosecution. The cross-examination of the complainant also would go to show that his testimony alone is not sufficient

to bring home the charge of commission of offence under the Act against the accused. Though it is established position of law that if the independent witness is not supporting case of the prosecution and if he is not declared hostile, and if the testimony of the prosecution witness who is a Government Officer is found not to be of sterling quality, then, same alone can not be relied upon for fastening criminal liability upon the accused. In the instant case as it appears that the testimony of the Food Inspector has not been very consistently supporting the case of the prosecution. This fact needs to be viewed with the fact that independent panch witness has not been declared hostile by the prosecution. This infirmity can not be cured so as to reverse the judgment & order of acquittal under section 378 of the Code in the present appeal. The Apex Court has also held in case of **JAGAN M. SESHADRI VS. STATE OF TAMIL NADU**, reported in 2002 SC p.2399 that when the independent witness has not been declared hostile and he has not supported the case of the prosecution, then the prosecution can not be permitted to wriggle out of the testimony of the said witness which is dealing serious blow to the entire case of the prosecution.

5. In view of these, this Court is of the considered view that the impugned judgment & order deserve to be sustained. The appeal

therefore deserve to be dismissed and is accordingly dismissed.

[S.R. BRAHMBHATT, J]

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